

**National Association of Letter Carriers, Branch #47
(U.S. Postal Service) and Dale Carroll.** Case 27–
CB–3733–P

February 23, 2000

DECISION AND ORDER

BY MEMBERS LIEBMAN, HURTGEN, AND BRAME

On October 1, 1998, Administrative Law Judge Albert A. Metz issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions¹ and to adopt the recommended Order as modified.²

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as

¹ Contrary to our dissenting colleague, we agree with the judge that the Respondent violated Sec. 8(b)(1)(A) when it told the Charging Party that it would not provide him with the overtime desired list (OTDL) because he wanted the list in order to file charges against the Respondent, and not for a grievance. Our dissenting colleague maintains that the Respondent was simply explaining that it would not assist the Charging Party in prosecuting a charge against itself, and was not threatening him that it was refusing to provide the information in retaliation for filing a charge. The test for a violation of Sec. 8(b)(1)(A), however, does not depend upon an examination of a respondent's motivation. Rather, it depends on whether or not the respondent's statement or conduct would have a reasonable tendency to restrain or coerce an employee in the exercise of statutory rights, including the right of access to the Board's processes. *Boilermakers Local 686 (Boiler Tube Co. of America)*, 267 NLRB 1056, 1057 (1983). We adopt the judge's finding that the Respondent's statement violated Sec. 8(b)(1)(A) because such a statement demonstrated to the Charging Party the Respondent's retaliatory motive in refusing to provide the list and thus would reasonably tend to restrain or coerce an employee from filing charges with the Board.

We further agree with the judge's conclusion that the allegations contained in the amended charge and complaint are sufficiently related to the allegation in the original, timely filed charge, to satisfy the requirements of Sec. 10(b). The allegations involve the same section of the Act (Sec. 8(b)(1)(A)) and the same legal theory (the Union's duty of fair representation owed to all unit employees). Further, the charge, amended charge, and complaint allegations all involve the same sequence of events: the Charging Party's efforts to determine the accuracy of his overtime rights under the collective-bargaining agreement. See *Nickles Bakery of Indiana*, 296 NLRB 927, 928 (1989). Further, the Respondent was given adequate notice to prepare and present evidence to defend against the complaint allegations, which were fully litigated at the hearing. Cf. *Carpenters Local 35 (Construction Employers Assn.)*, 317 NLRB 18 (1995).

Member Hurtgen finds his colleagues' analysis of this issue to be consistent with his own analysis in his dissent in *Ross Stores*, 329 NLRB 573 (1999). He, therefore, agrees that the allegations contained in the amended charge and complaint are sufficiently related to the allegation in the original, timely filed charge, to satisfy the requirements of Sec. 10(b).

² We have modified the judge's recommended Order to reflect the appropriate injunctive language.

modified below and orders that the Respondent, National Association of Letter Carriers, Branch #47, Denver, Colorado, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

Substitute the following for paragraph 1(c).

“(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.”

MEMBER HURTGEN, dissenting in part.

I do not agree that the Respondent Union threatened Carroll that its refusal to supply the information was in retaliation for his filing of a charge with the Board. The facts show that the Respondent explained to Carroll that it would supply information to support a grievance against the employer, but would not supply information to support a charge against itself. In essence, the Union would not assist the prosecution of a case against itself. Rather, Carroll should get the information from the employer. I agree that this explanation is not a valid basis for refusing the information. But that explanation is a far cry from threatening the employee that the refusal to supply information is a retaliatory punishment for charge-filing. In these circumstances, the General Counsel has not shown that Carroll would reasonably interpret the Respondent's explanatory remark to mean that the Respondent was retaliating against him for charge-filing. Accordingly, I dissent.

Barbara E. Greene, Esq., for the General Counsel.

Michelle Dunham Guerra, Esq., for the Respondent Union.

DECISION¹

ALBERT A. METZ, Administrative Law Judge. This case involves issues of whether the Respondent has violated Section 8(b)(1)(A) of the National Labor Relations Act (the Act).² On the entire record, including my observation of the demeanor of the witnesses, and after consideration of the parties' briefs, I make the following findings.

I. JURISDICTION AND LABOR ORGANIZATION

The Respondent admits that it is a labor organization within the meaning of Section 2(5) of the Act, and that the Board has jurisdiction over the United States Postal Service (USPS) under the terms of the Act.

II. BACKGROUND

The Respondent is the collective-bargaining agent for postal letter carriers at the Denver, Colorado, Sullivan post office. The Respondent's stewards at Sullivan are Linda Wishon and Jack Hart. Larry Miles is an alternate steward. The Charging Party, Dale Carroll, is a unit employee represented by the Respondent. Carroll had been a union steward, but at the time of the relevant events, no longer held that position.

¹ This case was heard at Denver, Colorado, on June 15–16, 1998. All dates refer to 1997 unless otherwise stated.

² 29 U.S.C. § 158(b)(1)(A).

III. THE OVERTIME DESIRED LIST

The collective-bargaining agreement between the Respondent and the USPS provides that overtime work shall be equitably distributed among employees desiring to perform such work. In an effort to efficiently distribute such work an overtime desired list (OTDL) of interested employees is maintained in the USPS supervisor's office. Employees are individually named and their hours worked per day, including overtime, is stated on this list. A final determination of the equitable distribution of overtime is made at the end of each calendar quarter. The overtime opportunities, however, are tracked on a daily basis so that inequities may be detected before the end of a quarter.

Steward Linda Wishon maintained a list of overtime hour opportunities on her personal home computer as a check against any mistakes on the OTDL. She also shared her software formula with Supervisor Rick Pruess who maintained his calculations on a USPS computer. When Wishon discovered what she believed to be an error on the OTDL, she would give this information to USPS supervision.

Part of the agreement between the USPS and the Respondent requires that if an employee has asked for overtime but ultimately refuses such work he is nonetheless charged with having worked the overtime hours for purposes of calculating equitable distribution.

In the late summer of 1997 Carroll had questions about his being charged for overtime work not performed when he was on vacation. He also had doubts as to whether Respondent's steward, Jack Hart, had received preferential treatment regarding overtime work calculations. As a result Carroll filed unfair labor practice charges against the Respondent and a grievance. The Respondent ultimately settled the grievance but Carroll continued to have doubts about the accuracy of his overtime hours. On September 2 Carroll sent a routing slip to four union stewards requesting that the Respondent give him, "day to day reports on both OTDL's for the third quarter." When he did not immediately get the information, Carroll sent a second request to the Respondent's stewards on September 3. Carroll noted in each request that he was acting as his own steward in the matter.

Stewards Wishon and Hart talked to Carroll about his request for information. They asked if he wanted to file a grievance in conjunction with his request for the OTDL. Carroll told them he needed the information for a charge that he had filed with the NLRB. They asked if he had specific dates in mind and he told them he did not but wanted to see all the hours he was being charged with for overtime. The stewards told Carroll that since he wanted the information for a charge with the NLRB and not a grievance he should see management about getting the list from them. Within a few days the Respondent did give Carroll a copy of the official OTDL but never gave him Wishon's computer calculations regarding employees' overtime hours.

IV. ANALYSIS

The Government alleges that the refusal of the Respondent to provide Carroll with the Respondent's list regarding overtime violates its duty to fairly represent Carroll. The Respondent contends that Wishon's personal notes were not required to be

produced because its duty of representation does not extend beyond representation under the contract.³

A union has the duty to fairly represent employees for whom it possesses collective-bargaining rights under the Act. The Board holds that a union may breach its duty of representation, and thus violate the Act, if it fails to provide employees with a wide range of requested information. *Auto Workers Local 909 (General Motors Corp.-Powertrain)*, 325 NLRB 859 (1998) (refusal to account to its members for the disparity in grievance settlement money distribution.); *Letter Carriers Branch 529*, 319 NLRB 879, 880 (1955) (copies of a grievance.); *Teamsters Local 282 (General Contractors)*, 280 NLRB 733 (1986) (job referral information in the operation of an exclusive hiring hall); *Security Personnel of Hospitals (Church Charity Foundation of Long Island)*, 267 NLRB 974, 980 (1983) (status of grievance); *Security Officers Local 408 (South Jersey Detective Agency)*, 260 NLRB 419 (1982) (copies of collective-bargaining agreement and health and welfare plan). The duty includes the obligation to supply information when the request is reasonably directed toward ascertaining whether the employee has been fairly treated in receiving work assignments. *Operating Engineer Local 3*, 324 NLRB 1183 (1997).

The Respondent, in its representative capacity, used Wishon's list to check on the equitable distribution of overtime work. This was the same reason Carroll asked for the Respondent's list. The Respondent's OTDL would be helpful to Carroll in determining if he had been incorrectly charged with hours or if he was being treated disparately. This information was useful to him regardless of ultimate intended purpose—processing a Board charge or filing a grievance. Carroll could not know what final use the information would be to him until it was received and analyzed. The Respondent did not give any legitimate reason the requested information should not be supplied. Although Carroll was given the USPS' OTDL, he did not receive the Respondent's list as a check on the accuracy of his overtime rights under the collective-bargaining agreement. The Respondent regularly used its own list to have changes made in the USPS' overtime calculations. I find that the Respondent's refusal to give Carroll its OTDL was "sufficiently outside the range of reasonableness as to be accurately characterized as arbitrary." *Letter Carriers Branch 529*, supra. I find that such refusal is contrary to Respondent's duty of fair representation and is a violation of Section 8(b)(1)(A). *Operating Engineers Local 3*, supra.

The Board has further alleged that Carroll was threatened by the Respondent when the Union's OTDL list was refused him because he had filed charges with the Board. The statement to that effect by the Respondent's agents did tend to have a restraining and coercive effect on an employee. I find that the refusal to provide the information because Carroll filed charges with the Board is an additional violation of Section 8(b)(1)(A) of the Act.

CONCLUSIONS OF LAW

1. The United States Postal Service is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

³ The Respondent also argues the original charge does not encompass the conduct alleged to be a violation of the Act. I find the language of the original and amended charges is sufficient to incorporate the conduct litigated at the hearing and alleged in the complaint.

2. The National Association of Letter Carriers, Branch #47 is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has violated Section 8(b)(1)(A) of the Act.

4. The foregoing unfair labor practices constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

The Respondent, National Association of Letter Carriers, Branch #47, its officers, agents, and representations, shall

1. Cease and desist from

(a) Refusing to supply information from the Union's overtime desired list to employees represented by the Union.

(b) Telling employees it will not provide them with information because they have filed charges with the National Labor Relations Board.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Supply to Dale Carroll the Union's overtime desired list information he requested on September 2 and 3, 1997.

(b) Within 14 days after service by the Region, post at its business offices and meeting halls copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 27, after being signed by

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to supply information from the Union's overtime desired list to employees represented by the Union.

WE WILL NOT tell employees we will not provide them with information because they have filed charges with the National Labor Relations Board.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL supply to Dale Carroll the Union's overtime desired list information he requested on September 2 and 3, 1997.

NATIONAL ASSOCIATION OF LETTER
CARRIERS, BRANCH #47